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ABSTRACT

This booklet contains two papers: (1) "Federal Agencies and Urban Segregation: Steps Toward Coordinated Action," by Gary Orfield; and (2) "Mounting a Concerted Federal Attack on Urban Segregation," by William L. Taylor. In the first paper, racial, economic, and educational trends in urban areas are reviewed. Lack of Federal commitment, Congressional tendency to blame cities for their own problems, lack of programs for residential integration, and weak pursuit and impact of civil rights enforcement are identified as barriers to unified action for desegregation. Steps that Federal agencies could take to improve the present record are discussed, including data collection, civil rights office participation in policy formation, development of enforcement procedures, and coordination among Federal departments. The second paper explores possibilities for a coordinated Federal attack on housing and school segregation in metropolitan areas. It is argued that, because residential patterns and school desegregation are inextricably linked, court litigation regarding one problem should also address the other. Steps toward a Federal effort for combined school-housing relief are outlined. These include interagency cooperation, shared information, and increased focus on desegregation policy in the executive branch of the government. (GC)

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RACIAL SEGREGATION: TWO POLICY VIEWS

Federal Agencies and Urban Segregation: Steps Toward Coordinated Action

by GARY ORFIELD

Mounting a Concerted Federal Attack On Urban Segregation: A Preliminary Exploration

by WILLIAM L. TAYLOR

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Introduction

The efforts of the Ford Foundation to assist school desegregation go back as far as the decision of the U.S. Supreme Court in *Brown* v. *Board of Education of Topeka.* Early in 1978, a year before the twenty-fifth anniversary of the historic decision that declared racial desegregation unconstitutional, the staff of the Foundation examined again the federal role in school desegregation. We wanted to determine whether further grants might be useful in promoting clearer thinking in this thorny area by officials in the many Washington offices that affect racial living and schooling patterns. To help us consider the interrelated problems of political pressures, complex legal interpretations, and roles of multiple federal agencies, we commissioned the two papers that are here reprinted.

These papers have been used already as a basis for informal discussions with a number of federal officials in the departments of Health, Education, and Welfare, Housing and Urban Development, Justice, and other agencies. They have stimulated some useful explorations and even a few actions by persons genuinely interested in improving the federal government's performance in its anti-discrimination responsibilities.

The papers argue for stronger coordination among HEW, HUD, and Justice in enforcement of the law and for more comprehensive planning for litigation. Their common assumption is that with leadership and imagination the intractable difficulties of delivering the promises of the *Brown* decision can be overcome.

Gary Orfield, author of the first paper, is professor of political science and a member of the Institute of Government and Public Affairs, at the University of Illinois. He has written widely about school desegregation. His book, *Must We Bus? Law, Segregated Schools,*

and National Policy, was recently published by the Brooking Institution in Washington.

William Taylor, author of the second paper, is Director of the Center for National Policy Review of the School of Law at Catholic University of America in Washington, D.C. He was staff director for the U.S. Commission on Civil Rights from 1965 to 1968 and a staff attorney at the NAACP Legal Defense and Educational Fund from 1954 to 1958.

The July 2 decision of the Supreme Court in the *Dayton* and *Columbus* cases provides hope that the traditional role of the federal courts in attacking racial discrimination in schools will continue as an important force in the years ahead. These papers argue for new thinking both in the school desegregation law suits of the future and in the federal government's enforcement of Title VI of the Civil Rights Act.

The views expressed in these documents are those of the authors. We are making them widely available for the benefit of those who are seeking ways to reduce racial isolation in American society and its institutions.

HAROLD HOWE II
Vice President for Education and Research

Federal Agencies and Urban Segregation Steps Toward Coordinated Action

by GARY ORFIELD

More than a decade after passage of the civil rights and fair housing laws of the 1960s, there has been no significant change in the residential segregation of the nation's large cities, and, with the exception of some parts of the South and a few northern systems under court order, large city schools remain highly segregated. Although most Americans say they support integration and believe that a great deal has already been accomplished, ghettos and barrios are much larger and now include some suburbs. More than two years into a national administration where many of the major policy positions are filled with strong civil rights supporters, there is no coordinated or coherent policy for urban integration. Indeed, there has been little serious analysis of strategies either within or between departments to reduce desegregation in the cities.

During a period of intense examination of ways to improve the effectiveness and efficiency of executive branch operations, it seems appropriate that the Administration review racial developments in our cities and seek better civil rights enforcement methods. This paper will review urban trends, analyze the barriers to unified action, and discuss a variety of steps federal agencies could take to improve the present record.

HOPES AND REALITIES

It is difficult to find an elected official or an administrator who does not favor the goal of integrated cities. Few

believe that it will be healthy for American society, in the long run, to have the large majority of our people living in segregated urban settings. In a society where almost three in ten newborn children are members of minority groups, such separation, reinforced by self-evident inequalities, can only produce serious instability. California, the most populous state, will have a majority of Hispanic and black children in its public schools within a decade. Racial harmony and equal opportunity cannot be achieved within a system of vast and rapidly spreading ghettos and barrios, growing in the very areas where unemployment is highest, disinvestment most rapid, and the capacity of local government to maintain even existing services most problematical.

Ten years ago the Kerner Commission reported its "basic conclusion" about the cause of the riots of the 1960s: "Our nation is moving toward two societies, one black, one white—separate and unequal."[1] This prophecy, accompanied by the assassination of Martin Luther King in 1968, posed a basic challenge to federal officials. Before 1968 was over, there were strong and encouraging responses from Washington. Congress surprised most observers by passing a fair housing law that covered most housing units.[2] The Supreme Court handed down a sweeping ruling against housing discrimination.[3] Congress enacted the largest housing subsidy program in American history, giving the government unprecedented leverage over the housing market.[4] The Department of Health, Education, and Welfare (HEW) won an urban school desegregation plan in its first

[1] Report of the National Advisory Commission on Civil Disorders (New York: Bantam Books, 1968), p. 1.

[2] 42 U.S.C. §§ 3601-3619, 3631 (1970).

[3] *Jones* v. *Mayer*, 392 U.S. 409 (1968).

[4] The programs were created by the Housing and Urban Development Act of 1968, 82 Stat. 476.

major case outside the South (Wichita) and the Justice Department filed its first cases against segregation in northern cities.[5] The astonishingly rapid desegregation of the South since the mid-1960s suggested that racial problems were not intractable. Now the first steps had been taken in the North.

There were also signs of disenchantment, however. The fair housing law included a long "anti-riot" section. The House of Representatives had turned against school desegregation enforcement. Public opinion polls showed little remaining support for further racial change.[6] The year ended, in fact, with the election of a new President who had campaigned against vigorous civil rights enforcement.

Within a year all hopes for major advances in the executive branch had vanished. President Nixon shut down HEW's school desegregation program and fired the director of the HEW Office for Civil Rights.[7] He would soon reject Secretary of Housing and Urban Development (HUD) George Romney's strategy for integration of the suburbs.[8] The Justice Department appeared in federal courts on behalf of delaying school desegregation and the President nominated to the Supreme Court judges with a weak record on desegregation issues.[9] At a time when existing progress seemed in

[5] The first cases were against the Chicago suburb of South Holland, Ill., Pasadena, Ca., and Indianapolis, Ind.

[6] Support for civil rights enforcement began to plummet in 1966. See George H. Gallup, *The Gallup Poll* (New York: Random House, 1972), vol. 3, pp. 1934, 2009.

[7] The controversy over the enforcement of HEW's school desegregation guidelines is described in Leon Panetta and Peter Gall, *Bring Us Together* (Philadelphia: Lippincott, 1971).

[8] "Statement about Federal Policies Relative to Equal Housing Opportunity," June 11, 1971, in *Public Papers of the President of the United States: Richard Nixon, 1971*, p. 730 ff.

[9] The Civil Rights Division first appeared in the Supreme Court in favor of delay in desegregation in the fall of 1969. Its appeal was rejected by a

jeopardy, major advances became impossible. For eight years the issues were set aside.

During the same period a number of other strategies of urban reform were abandoned. The Model Cities program ended before its plans could be implemented; the community action program declined; the drive for equalizing school tax resources through litigation met defeat in the federal courts. The belief in the late 1960s that black mayors or black school superintendents could transform their cities was recognized as wishful thinking. After taking office, they often discovered that their only real choice was which program to eliminate first.

Racial demographers and students of school enrollment trends recognized that by the mid-1970s urban segregation was virtually untouched by civil rights enforcement. The large cities replaced the rural South as the heartland of segregation. Within individual communities, there has seldom been more than a modest decline in the very high level of residential segregation.[10] Examining the problem on a metropolitan-wide basis, there is some evidence that segregation is still increasing.[11] The 1970s have brought a rapidly growing problem of suburban ghettoization and increasing segregation of Hispanics in several parts of our country.[12] There are

unanimous court in *Alexander v. Holmes*, 396 U.S. 19 (1969). Civil rights was a major issue both in the 1969 Senate rejection of the nomination of Clement Haynsworth and the 1970 nomination of G. Harrold Carswell.

[11] Annemette Sorensen, Karl E. Taeuber, and Leslie J. Hollingsworth, Jr., "Indexes of Racial Residential Segregation for 109 Cities in the United States, 1940 to 1970," University of Wisconsin Institute for Research on Poverty Discussion Papers, 1974, pp. 7–9.

[12] Frank deLeeuw, Anne B. Schnare, and Raymond J. Struyk, "Housing," in William Gorham and Nathan Glazer (eds.), *The Urban Predicament* (Washington: Urban Institute, 1976), pp. 145–155.

[13] These patterns are apparent both in the yearly reports of school enrollment statistics (which often forecast overall community change) and in mid-decade special censuses conducted in some suburban areas.

some positive trends for high status minority families and for inner city neighborhoods that are experiencing "restoration" and in-migration of young whites, but these have had very little overall impact.

The most recent national statistics on school segregation show little progress in the 1970s, outside the southern and border states.[13] Segregation of black children is at a standstill in the Midwest and still increasing in the Northeast. Across the United States it is increasing for Hispanic children.[14] A recent study of the Chicago metropolitan area, which contains almost 7 million people, found that segregation in 1976–1977 was so sharply defined that moving one white child from the average city black classroom and one black from the average white suburban classroom would produce complete apartheid in the schools.[15] New projections show that within ten years Los Angeles and Chicago will join the list of cities where only one-tenth of all public school students are white.[16] The New York City schools project that there will be only one high school with a white majority in the borough of Queens by the early 1980s.[17] Racial transition is underway in the public schools in outlying suburbs from the Chicago metropolitan area, and change is coming rapidly.[18] There are

[13] The most recent national statistics released by HEW are for the 1974–1975 school year and were first published in the *Congressional Record*, June 20, 1976.

[14] Center for National Policy Review, *Trends in Hispanic Segregation 1970–74* (Washington: CNPR, 1977).

[15] Technical Assistance Committee on the Chicago Desegregation Plan, *Integration in Chicago* (Report to Illinois State Board of Education, May 1978).

[16] Demographic projections prepared by Reynolds Farley for Illinois State Board of Education and Superior Court of Los Angeles County, May and July, 1978.

[17] Projections prepared by the research division of the New York Public Schools for use in litigation on desegregation of Andrew Jackson High School in Queens.

similar patterns in St. Louis, Newark, and Washington.

The underlying trends suggest that segregation may become still more entrenched. Rapid suburban housing construction continues but skyrocketing housing costs are closing the market in the outer suburbs to lower-income families.[19] Those denied opportunity to buy low down-payment, low interest rate suburban housing a generation ago were thereby denied accumulation of equity for future moves. Thus fewer minority families have been homeowners and most of those who do own homes live in areas that have less rapidly inflating values.[20] Compounding this are high unemployment and a rapidly widening economic disparity for the large numbers of black and Hispanic single parent families. The strong outward movement of employers with industrial and commercial jobs makes economic mobility substantially more difficult for those trapped in segregated areas. Schools and other public services vital for long-term mobility are already experiencing cutbacks in some central cities and will in others in the future. For

[18] Technical Assistance Committee, *Integration in Chicago*. This pattern of ghettoization is particularly apparent in sections of the southern and western suburbs of Chicago. Similar patterns are apparent in some southern and eastern suburbs of Los Angeles, in Prince George's County, Maryland, and elsewhere.

[19] The average price of a new single family home reached $61,500 in June 1978. (HUD data reported in *Chicago Sun-Times*, August 13, 1978.)

[20] Less than one-half of minority families but more than two-thirds of white families were homeowners in 1970. The mere fact of not owning a house between 1950 and 1970 was estimated to mean that the family lost an equity accumulation of $16,000. Since 1970 the cost of housing has increased at a much more rapid rate bringing a sharply growing gap between owners in desirable areas and renters or owners in deteriorating communities. Since 1976 there has been hyperinflation in some parts of the housing market, producing increases up to 30 per cent a year in parts of California. (U.S. Commission on Civil Rights, *Twenty Years After Brown: Equal Opportunity in Housing*, 1975, pp. 145–149; Neil S. Mayer, "Homeownership: The Changing Relationship of Costs and Incomes and Possible Federal Roles" (Washington: Congressional Budget Office, 1977); Ray Hebert, "L.A. Housing Value Trend Favors Anglos: Study Predicts Median in 1980 at Twice That in Black Areas," *Los Angeles Times*, April 9, 1978).

large groups of blacks and Hispanics, isolation and inequality are far worse now than in the past.

Even for minority families with education, good jobs, and money, segregation remains a very serious problem. Both HUD's recent study of housing segregation and a major analysis of metropolitan Detroit by Reynolds Farley and other University of Michigan scholars show general practices of housing discrimination and steering.[21] Large numbers of black and Hispanic middle-class families find it necessary to enter private and parochial schools to obtain the kind of education offered routinely to middle class whites.[22] When they succeed in finding housing outside the ghetto, they often find their new neighborhood resegregates.

SURVIVAL STRATEGIES

Since 1968 the amount of federal assistance to cities has grown rapidly and the dependence of cities on money from other levels of government has become far greater. While the funds have increased, however, the hopes for change in underlying programs have shrunk. The basic strategy now—through revenue sharing, community development grants, and the Comprehensive Employment and Training Act (CETA)—is to try to find a way to use federal aid to keep the most important existing services operating at close to the previous year's level. Drastic inflation in the costs of goods and services at a time when city tax bases are stagnant or shrinking has meant

[21] Reynolds Farley, Howard Schuman, Suzanne Bianchi, Diane Colasanto, Shirley Hatchett, "Chocolate City, Vanilla Suburbs: Will the Trend Toward Racially Separate Communities Continue?" forthcoming in *Social Science Quarterly*.

[22] There are 55 segregated black Catholic schools in Chicago with largely Protestant enrollments, and 70 per cent of the Washington, D.C. Catholic school enrollment are black. Across the country, black and Hispanic Catholic enrollments have been rising rapidly in the 1970s while white enrollment has continued to fall.

that the only feasible strategy has been to try to shift the costs to state and federal governments. Support for this shift is slight in most state capitals and recent votes in Congress against countercyclical revenue sharing and in favor of cuts in CETA and housing subsidies suggest that support is eroding in Washington.[23] President Carter's fiscal year 1980 budget cut urban programs well below their current levels in constant value dollars, and Congress is inflicting still deeper cuts. The table (page 14) illustrates the decline in real spending for social programs. After the 1980 Census triggers a major decline in central city representation in the legislatures and Congress, resistance to urban spending will surely mount.

Yet most of the strategies developed to deal with the underlying causes of central city decay have been largely abandoned. Organizing poor neighborhoods is no longer a major goal nor is planned coordination of federal urban programs. Congress has repealed HEW's authority to desegregate urban public schools.[24] The housing subsidy programs have been replaced by a much stronger reliance on a segregated private housing market. The Justice Department has not filed a new urban school desegregation case since the early 1970s (though it has intervened in some private cases), and has initiated no important litigation against suburban housing exclusion. The Supreme Court has rejected the drive to equalize financial resources for all schools although

[23] See, for example, the debate on the Housing and Community Development Amendments of 1978, *Congressional Record*, July 20, 21, 24, 1978; *New York Times*, August 3, 1978; *Wall Street Journal*, August 9, 1978.

[24] The repeal came in stages from 1974 to 1977 beginning with the Mansfield-Scott amendment to the 1974 Elementary and Secondary Education Act, reaching much further with the 1976 Byrd amendment to the HEW appropriations bill, and becoming almost absolute with the 1977 Eagleton-Biden amendment to that year's appropriations bill. These amendments forbid HEW to require any reassignment of children to schools outside their neighborhoods even when necessary to correct a proven constitutional violation.

President Carter's Fiscal Year 1980 Budget Compared with the Cost of Maintaining Current Services in Major Urban Programs after Inflation

	Budget Authority			Outlays			
	(in millions) 1979	1980	Per cent Change from 1979 Level	(in millions) 1979	1980	Per cent Change from 1979 Level	Per cent Difference from Current Policy Maintenance
General Revenue Sharing	$ 6,855	$ 6,855	0	$ 6,852	$ 6,863	0	0
Community Development Block Grants	3,750	3,900	+ 4	2,875	3,272	+ 14	- 6
CETA	9,986	8,466	-15	9,452	8,882	—	-23
ARFA/Supplementary Fiscal Assistance	250	150	-40	252	150	—	-73
Local Public Works	11	0		2,051	319	—	-15
LEAA	516	387	-25	545	470	-14	-23
UMTA	2,296	2,350	+ 2	2,191	2,390	+ 9	-11
Total	$23,664	$22,108	- 7	$24,218	$22,346	- 8	-14

SOURCE: *Congressional Budget Office, Human Resources and Community Development Division, Budget Issue Memorandum # 30,1979.*

this issue is still alive in state courts. Although major cities, including New York, Cleveland, Detroit, and others face continuing severe cutbacks in services to avoid bankruptcy, the tendency by the federal government has been to change distribution formulas to provide more money for suburbs and the South. The trend has been toward temporary, ad hoc, year-to-year solutions, denying any need either for a massive input of resources or a strong integrationist policy to break out of the cycle of separation and inequality. The reaction in Congress against CETA and countercyclical urban aid indicates that even temporary answers have lost support. The popular tendency is to deny the existence of fundamental problems, to blame the cities for their own problems, and to demand that they make the necessary cuts in services.

THE FEDERAL IMPACT ON SEGREGATION

The common assumption is that although the federal government historically supported segregation of American cities, it has been working actively for integration for the past decade and a half. The assumption is incorrect. Very little of the civil rights enforcement apparatus of the federal government has been devoted to urban integration at any time. As for the substantive programs, they are seldom weighed in terms of their impact on segregation; therefore their contemporary effect is often unknown. There are reasons to think, however, that the net impact of some of the most important substantive programs may still be to increase segregation.

The President's Urban and Regional Policy Group, for example, found that federal highway programs had contributed to the loss of much of the population and wealth in the central cities. It found that the federal tax laws rewarded investment in new construction, not in

renovating older buildings thus creating increasing momentum for dispersion and central city decay.[25] Preliminary reports on the only large federal housing subsidy program now in operation, Section 8, show that it does not work well for minority families; it either keeps them in their existing housing or helps them move to a nearby neighborhood, feeding the deeply rooted process of ghetto expansion on the periphery of segregated areas. Substantial numbers of Section 8 units are in white areas but they are largely marketed to whites.[26]

The point is not that there is an intent to segregate, but programs are operated in cities with a strong momentum of expanding segregation without realistic consideration of their racial impact. Simply feeding money into the existing private housing markets, for example, will almost guarantee segregation. People involved in real estate generally believe that there are only white neighborhoods, black neighborhoods, and neighborhoods in transition, and so does the public.[27] In most cities, the actions perpetuate the self-fulfilling prophecy of ghetto transition by steering minority buyers into

[25] Summary of report on "A National Urban Policy," in *Chicago Sun-Times*, August 11, 1978.

[26] Information on the much lower success rate in finding housing for eligible black families is found in Margaret J. Drury, David B. Carlson, and Kathleen Hom, "Participation in the Existing Housing Program by Households," in HUD Office of Policy Development and Research, *Lower Income Housing Assistance Program (Section 8): Interim Findings of Evaluation Research*, 1978, pp. 1–26. Information on probable racial consequences from data collected by HUD fair housing officials, Zina Greene and Mary Pinkard, and by Purla Eston, a developer of the housing allocation model of the Southern California Association of Governments. The same effect was noted in a similar experiment in Kansas City. (Arthur P. Solomon and Chester G. Fenton, "The Nation's First Experience with Housing Allowances: The Kansas City Demonstration," Joint Center for Urban Studies Working Paper No. 23, October 1973.)

[27] Farley et al., "Chocolate City"; Solomon Sutker and Sara Smith Sutker (eds.), *Racial Transition in the Inner Suburbs: Studies of the St. Louis Area* (New York: Praeger, 1974).

integrated areas and white buyers away. Given the very strong desire by potential black homeowners for integrated neighborhoods and the strong white resistance to neighborhoods with more than a very small minority of blacks (because of the fear of ghetto expansion), this channeling usually does produce ghettoization in short order.[25] These expectations cannot be reversed without conscious action against them.

Hispanics give a much lower priority to the movement for integration, in part because of the linguistic and cultural attractions of Hispanic neighborhoods and in part because Hispanics with the necessary income for suburban housing experience far less segregation than blacks according to recent studies in the Chicago and Los Angeles areas. Polls indicate that Hispanics are closely divided on the question of school busing.

Race is a fundamental reality of urban development. Until there are policies that offer whites a realistic choice of stably integrated neighborhoods with stably integrated schools, rather than transitional ghettos, there is very little incentive for even the most sympathetic white to move into an "integrated" community. (Many whites moving into cities now are moving into areas perceived to be in transition to upper status white communities.)

NOTIONS OF CIVIL RIGHTS RESPONSIBILITIES

The weak impact of civil rights enforcement on northern segregation (in contrast to its powerful effect on the

[25]The Farley study showed, for example, that there was very strong black demand and very weak white demand for a substantially integrated neighborhood with half blacks and half whites. When this difference in demand is superimposed on a system of real estate channeling and panic peddling in some communities, the change can come rapidly. A description of the recent racial transition in the Marquette Park area of Chicago can be found in UPI articles reprinted in *Congressional Record*, May 26, 1977, pp. S8781–82.

South) arises in part from the confusion of goals in the programs. In contrast to the earlier unambiguous goals of ending blatant forms of segregation, the civil rights offices have experienced a multiplication of responsibilities and a diffusion of goals. There has been little impact on urban segregation because little effort has been made. Integration has not been given any real priority.

Civil rights officials now face not merely a decision about whether or not to enforce the law, but must choose between a variety of possible and legitimate ways to use their agency's resources. They may do any of the following:

1) avoid racial issues and concentrate on other forms of discrimination against such groups as the handicapped and senior citizens
2) deal with racial differences through remedies emphasizing "equality" not desegregation
3) pursue individual case-by-case desegregation remedies
4) emphasize litigation for solution of general desegregation issues
5) invoke fund cutoffs to force basic changes in the local community.

Officials must choose among these approaches while realizing that the more controversial the policies are, the more difficulty there is in developing the necessary agreement for action. Civil rights staffs usually have relatively little internal agency influence unless there is very strong support from departmental and administrative leadership. Otherwise, there is little chance to reshape substantive policy decisions with racial implications. Even with support the agencies may lack the

analytic capacity and knowledge of programs needed to participate effectively in policy making.

Coordination between departments, essential when dealing with complex urban issues, confronts the problems of weak lateral communication and considerable resistance to leadership by any single office unless there is strong and continuing pressure for action from the White House and the Office of Management and Budget (OMB).

Before considering the coordination issue, one must examine more closely the problem of confusion of goals. It is impossible to effectively coordinate agencies that are not even *trying* to pursue the same objective.

ENDING NONRACIAL DISCRIMINATION

As the struggle against discrimination has expanded rapidly in the past decade, the tasks of civil rights officials have grown to include many responsibilities that have nothing to do with segregation or even with race. Since these goals are usually far less controversial and politically explosive than those concerned with desegregation, they can easily displace earlier priorities. Disputes over library ramps for the handicapped, equal gym facilities for girls, bilingual ballots, mortgage credit for women, job rights for senior citizens, and a variety of other concerns have absorbed much of the energy of the civil rights offices.

There is a plausible need and a significant political constituency for each of these enforcement efforts. Virtually all of the nonracial enforcement tasks are less controversial than busing or attacks on white suburban exclusion. The political support is stronger and the political risk far less. The result of the expansion of legal duties and constituencies is a strong tendency toward incoherent enforcement strategies which try to do something for everyone, shifting resources from the

most explosive to the most widely supported changes.

If an agency is to be expected to take on the most difficult part of its responsibility, there must be strong administrative signals that these changes have a very high priority. Without strong leadership, agencies will seldom use their increased discretion to choose the most high-risk ventures, even though they may be decisively important in the long run.

EQUAL OPPORTUNITY STRATEGIES

Perhaps the most common form of civil rights enforcement does consider the problem of race but not that of segregation. The problems of blacks and Hispanics can be analyzed either as problems of group separation and inequality in urban society or as essentially individual problems of obtaining a fair share of services and jobs from the government and government-regulated private industry. Enforcement often attempts to redistribute services and does not deal with urban segregation. Its basic goal is equality within a context of segregation.

There are many examples of this approach, particularly in the civil rights review of the substantive programs. HUD's action in continuing to build public housing and subsidize private housing on segregated sites is aimed at eliminating some of the tangible "inequalities" between minority and white families. Reliance on bilingual education as the principal and often the only response to the needs of segregated Hispanic children is another example. HEW's massive review of New York City consisted almost entirely of gathering information about measurable inequalities in the schools, not segregation. When the Department of Transportation does a survey on the impact of a new highway, its primary concerns are jobs for minority workers and service to minority areas, not the highway's impact on segregation. Job discrimination enforcement

and minority contracting seldom move beyond employment statistics to examine the impact of selecting segregated sites in the outer suburbs to the future viability of the city and accessibility of jobs to minority families. Minorities gain temporary work in a project that helps move the economic base away from their communities.

There are, of course, strong arguments for the existing approaches. Some degree of segregation is a fact of life. There is no realistic chance that it can be eliminated in the foreseeable future. There are very important black mayors who insist on moves to equalize services and resources. The existing policies usually represent rational short-term responses. Often agencies fear that if they do not follow this course they will not be able to provide any services at all. Yet if "equal opportunity" is the dominant focus of enforcement, the elemental segregation of urban life is untouched. Federal aid may even have the unintended consequence of deepening segregation.

This strategy is often defended by officials as a reflection of the changing desires of the black community. In fact, however, black public support for integration remains extremely high, higher in some cases than at its peak in the 1960s. The recent study of metropolitan Detroit, for example, found an extraordinary black preference for integrated neighborhoods.[29] Four studies of black attitudes in communities with metropolitan-wide busing plans found large majorities supporting them in the black community, in spite of the unequal burden of busing for black children.[30] Recent public

[29] Farley et al., "Chocolate City."

[30] The polls were taken in metropolitan Charlotte, N.C., Louisville, Ky., Nashville, Tenn., and a number of the major metropolitan areas of Florida and were reported in the following documents: Everett F. Cataldo, Douglas S. Gatlin, and Michael Giles, "Determinants of Resegregation: Compliance/

opinion surveys in Los Angeles and Illinois find substantial black majorities favoring busing."

Minority officials running central city governments must obviously appeal for any possible sources of funds to keep their cities afloat. Some are openly bitter about a situation where the federal agencies refuse to enforce desegregation and then use the segregation of the central cities as a reason for denying funds. This is one of the by-products of an inconsistent and piecemeal enforcement strategy.

CASE-BY-CASE ENFORCEMENT

The most comfortable and least controversial method of settling conflicts over segregation is through the processing of individual complaints. Both lawyers and many civil rights enforcement officials think of the processing of individual cases as a central part of the enforcement task. After all, consideration of individual cases in a court or through a court-like process within an administrative agency reflects the tradition of the legal system and incorporates many of the ideas of due process that have been seen as the essence of justice. For lawyers, who occupy many of the policy-making positions and also have great influence in the civil rights groups, case-by-case work often seems the best way to

Rejection Behavior and Policy Alternatives," report to National Science Foundation, June 20, 1975, pp. 37–42; Willis Hawley and John McConahay, "Attitudes of Louisville and Jefferson County Citizens Toward Busing for Public School Desegregation: Preliminary Results" (Durham, N.C.: Duke University and Louis Harris and Associates, 1976; processed), pp. 4–5; Message Factors, Inc., "Parental Preferences for Pupil Assignment Plan" (Charlotte: Quality Education Committee, 1974; processed), pp. 18–20; Urban Observatory of Metropolitan Nashville, "Community Survey of Public Education in Metropolitan Nashville" (August 1976; processed), pp. 53, 56, 66, 80.

"'Illinois: Today and Tomorrow," A Statewide Study by the University of Illinois at Urbana-Champaign, May 24, 1978, p. 11; Survey by David Armor for Los Angeles Unified School District, included in Offer of Proof in Reference to the Testimony of David J. Armor, Ph.D., June 6, 1977.

enforce the law. It is not surprising that civil rights groups, Hispanic groups, women's groups, and others decided to sue HEW to force processing of each individual complaint within a fixed number of months.[12]

The individual case method is based on the central assumption that there is general compliance with the law and that provision need only be made for dealing with exceptional cases. In such situations, a very expensive and time-consuming procedure is justified to identify and punish proven law breakers and to protect the rights of those who are unfairly accused of discrimination. For example, HUD investigation and Justice Department litigation of a fair-housing violation in a small town would almost certainly take more than a year and perhaps even cost more than the house or apartment in which the black family wished to live.

The problem is that housing discrimination (and other forms of urban segregation) are not exceptional; they are the norm. In attempting to change the practices of a very fragmented housing market with hundreds of thousands of firms and millions of violations, an enforcement process that produces about two dozen Justice Department consent agreements and a few dozen HUD negotiations each year cannot have a discernible impact. Without an enormous increase in staff or the development of a very clear enforcement strategy, the federal effort may simply be irrelevant.

An emphasis on individual complaints can even be counterproductive. Often those who are frustrated enough to turn to the cumbersome federal bureaucracy are those with the most difficult and complex problems;

[12] An out-of-court settlement to these cases was eventually negotiated by the Carter Administration, which settled *Adams* v. *Califano*, *Brown* v. *Califano*, and *Women's Equity Action League* v. *Califano* in December 1977 ending four years of detailed judicial supervision of HEW enforcement activities. *HEW News*, December 29, 1977.

some have no good solution. Thus agencies are forced to commit resources to job cases where personal problems complicate investigations, housing cases where the victim cannot afford to wait for the house and the renter has only one or two units on the market, and school cases in central cities where only a small minority of whites remain. Such cases can either lead to failure in processing or to the development of remedies that discredit the enforcement agency.

LAW-MAKING CASES

One variation of the case approach seeks different goals and employs a definite strategy. This approach, particularly when it is used by the Justice Department, is intended not only to win satisfaction for the victims but to clarify and expand the requirements of the law. When the Justice Department takes an unsettled question of civil rights law to the Supreme Court, its role as legal representative of the U.S. government can be very influential in persuading the Court to devise more effective antidiscrimination requirements. To the extent that the judicial standards are simplified and strengthened they reduce the burden of enforcement. When the pronouncement of a new Supreme Court requirement is followed rapidly by executive branch action adopting the new standards and vigorously enforcing them, those who discriminate must risk the combined force of administrative and judicial action. Use of such cooperative strategies had a major impact on southern school desegregation during the Johnson Administration. Many districts concluded that change was inevitable and decided to comply rather than to first lose their federal funds and then be hit by Justice Department action anyway.[1]

[1] Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* (New York: John Wiley, 1969), Chapter 3.

The past decade has seen little use of the leading case approach. During the Nixon and Ford administrations, the Justice Department appeared in opposition to civil rights groups in many of the leading school desegregation cases and the important housing case, *Hills* v. *Gautreaux*. When important urban decisions, as in *Swann* v. *Charlotte-Mecklenburg Board of Education* and *Keyes* v. *School District No. 1 of Denver*, *Shannon* v. *HUD*, and *Gautreaux* were handed down, there was little effort either to file additional cases or to build the policies into HEW and HUD administrative enforcement policy. In fact, there was often continued resistance from the executive branch. Even in litigation there has still been no serious commitment to development of law on suburban housing exclusion or metropolitan school desegregation, the two most important urban segregation issues.

ADMINISTRATIVE FUND CUTOFFS

Civil rights groups in the South had discovered during the 1950s that the case-by-case procedure would not work and they worked hard to bring the executive branch into the battle as the enforcer of general rules for desegregation. The "equal opportunity" strategy had failed in more than a one-half century of experience with the *Plessy* v. *Ferguson* "separate but equal" doctrine. Only when there was an immediate threat of desegregation did southern officials move to remedy the most obvious inequities. The strategy by the National Association for the Advancement of Colored People (NAACP) of developing a series of cases to bring the Supreme Court to the point of the 1948 decision against restrictive covenants and the 1954 decision against southern segregation were highly successful in setting new constitutional norms. Efforts to implement them through filing individual cases, however, failed. South-

ern schools remained 90 per cent segregated in 1963.[34] Housing segregation increased in many areas the decade after the restrictive covenant cases.[35]

Beginning in 1956, the civil rights groups fought consistently for a law requiring nondiscrimination in all programs receiving federal funds. This issue prevented enactment of federal aid to education programs in the 1950s.[36] When it was written into law as Title VI of the 1964 Civil Rights Act it soon became the key to desegregation of the South. After the Johnson Administration made a credible threat to cut off federal aid, desegregation of the schools of the rural South was nearly finished within four years.[37] Southern hospitals rapidly changed their policies and practices. In only a very small fraction of cases were actual cutoffs necessary and those were usually short term.

The power of the administrative process is that it has a far broader reach than any court, a very important sanction, an active rather than a passive posture toward violations, and a substantial and specialized staff far better equipped than courts to monitor compliance. Courts reach only individual cases and they rely heavily on the willingness of local officials to carry out their orders honestly. They cannot initiate a case and do not receive any data until someone begins litigation. Long

[34] Anthony Lewis, *Portrait of a Decade* (New York: Bantam Books, 1965), pp. 256–257.

[35] Karl E. Taeuber and Alma F. Taeuber, *Negroes in Cities: Residential Segregation and Neighborhood Change* (New York: Atheneum, 1969), pp. 37–43.

[36] The leading civil rights amendment was the "Powell amendment," sponsored by Harlem Congressman Adam Clayton Powell and supported by the NAACP. For a description of the legislative battles see Robert Bendiner, *Obstacle Course on Capitol Hill* (New York: McGraw-Hill, 1964).

[37] The annual desegregation statistics were released by HEW. Regional statistics for the south and other regions in the 1970s appear in Center for National Policy Review, *Trends in Black Segregation, 1970–1974* (Washington: CNPR, 1977).

delays are endemic in the judicial process. Judges have neither the staff nor the expertise to monitor and evaluate what happens locally after the court order is signed. Often no clear and specific standards of compliance emerge from the various individual cases heard in widely separated courts. Administrative agencies can spell out such standards in regulations and guidelines.

The basic problem with administrative enforcement is political. The weapon of fund cutoff almost always wounds the agency that wields it. Even though it is in the law, and the law is written to *require* action, fund cutoff action is seldom seen as legitimate. Both state and local governments and a great many federal officials believe that its use damages substantive programs. It very commonly produces congressional protests and damages political support for agency programs. In order for the weapon to be credible, it must be used in a visible way when local defiance continues. There is probably no way to do this without a substantial political cost. Yet, if there are clear signs of executive and judicial commitment, change can come far more rapidly than under virtually any other approach.

BEYOND THE CIVIL RIGHTS STAFFS: INFLUENCE ON SUBSTANTIVE POLICY

Federal officials today know a good deal more about the impact of federal construction decisions on the snail darter than on segregation of blacks and Hispanics. There should be some way to build into the development of urban policies a method to evaluate the racial consequences of these and other federal actions.

SHOULD THERE BE A DESEGREGATION IMPACT STATEMENT?

One way of institutionalizing a concern about the racial consequences of policy decisions might be to follow the

model of the environmentalists and require an impact statement on every grant and every policy proposal. This model has been seen as a way to call attention to a number of concerns which may not otherwise surface in decision making. Thus, the idea impact statements on budgets, inflation, family, and others have been widely discussed in recent years. Some are already in operation.

I believe, however, that any such provision for civil rights would be premature. First, information on urban development and our data on federal programs are both too poorly developed to permit careful analysis at this time. The federal administrative and data collection systems are designed to support operation of individual categorical programs, such as vocational education or senior citizen housing, and not to see urban racial change as a key problem of analysis. Racial data are limited and usually intended as a screening device for civil rights compliance. Second, even if the data existed, the capacity to analyze it intelligently does not exist yet, particularly in most civil rights agencies. Third, it is important to take note of some of the problems that have developed with environmental impact statements:

1) they are very expensive
2) they are often used to delay projects
3) there is a tendency to blame this process for holding back decisions and programs
4) there is little evidence that the statements have much effect on the final decisions.

The last thing that civil rights supporters should want to do is to impose an onerous requirement that may have no impact. Great care should be taken to first find out what information really is essential and then to carefully limit data collection to what can be analyzed.

DATA COLLECTION

Accurate and appropriate racial data on the impact of programs is essential. Typically, where racial information is gathered, it is on the "equal opportunity" dimension of the civil rights problem. Thus, for example, HUD has information on how many blacks and whites are receiving Section 8 housing subsidies but very little on where they are living. The department has coded many of the Section 8 new construction projects by census tract, which could produce some important information when it is analyzed in terms of the racial composition of the census tract. The analysis will become more interesting when the 1980 Census shows the changes in those tracts during the 1970s. (A study now under way by Richard Fleisher shows a substantial number of units in areas that were already transitional in the 1960s.) There is a great difficulty, however. Most minority families receiving Section 8 subsidies do not move into newly constructed units. They either remain in their present homes or move into other previously existing housing. Limited racial data are available on these units, so no real analysis is possible yet of the racial impact of Section 8's first five years of operation as the primary subsidized housing program.

When the basic data becomes available the significance will not be self-evident. On the surface, for example, data showing that some black families on Section 8 moved from all-black neighborhoods to neighborhoods where one-half of the residents are white could be interpreted as a major improvement in residential integration. Analysis would probably show, however, that the statistics disguise a process that is actually an acceleration of ghetto expansion into adjacent neighborhoods or even ghettoization of an existing stably integrated neighborhood. Social scientists familiar with patterns of urban demography are essential if

an agency is to make sense of the data it collects (or perhaps even properly specify the data it really needs).

MODEL METROPOLITAN ANALYSIS

At present, no one knows the overall racial impact of current federal policies on the development of a single city. It would be very instructive to fund a broad interdisciplinary investigation of the question in one or two cities to get some idea of the strength of the various policy impacts. Such work could not be definitive, but it would begin to replace speculative arguments with some empirical information. Many important questions could be asked: Are federally subsidized mass transit systems operated in ways that make possible white suburban access to central city jobs but preclude commuting from ghettos to suburban job sites? Does the favorable tax treatment and financing of new construction as opposed to rehabilitation have racial consequences? Are federally subsidized housing projects aids or threats to residential integration? Which factors make the difference? What are the implications of the way segregated federal bilingual programs work for higher education opportunity and job market access and even residential segregation. A study of this sort, with private researchers working closely with federal civil rights, evaluation, and data management offices, would help build a framework of understanding for development of better policy.

PARTICIPATION IN POLICY DEVELOPMENT

While it seems too early for development of civil rights impact statements, it is none too soon for systematic involvement of civil rights offices in the development of legislation and regulations for substantive programs. If there is a new program for rehabilitation of neighborhoods, for example, civil rights offices should evalu-

ate its likely impact on residential segregation and suggest policy changes that might improve the outcome. Where federal programs are spurring gentrification (the rehabilitation of and movement to central-city neighborhoods by middle- and upper-middle-income groups), for instance, there could be requirements for placing scattered site public housing and senior citizen housing in such areas to permit long-time minority residents unable to afford escalating housing prices to remain. Such a policy would surely improve the long-term prospects for neighborhood integration. Once solid racial data on existing programs become available, civil rights offices will be far better able to back up such arguments.

Civil rights staffs should be regular participants in the design and interpretation of evaluation research. Since evaluation research is increasingly important in providing policy makers with an understanding of what is actually happening and since new policy proposals often arise out of the evaluation process, it is very important that research goals include determining the impact of any program on urban segregation. When the research is interpreted in policy papers, procedures should require that the civil rights office have a full opportunity to comment.

DEVELOPMENT OF ENFORCEMENT STRATEGIES

Once more useful information is assembled and civil rights offices are staffed to analyze urban changes, plans should be developed for using the civil rights enforcement process to support integration of urban communities. Thus, very high priority could be given to complaints that come from highly segregated white areas well away from ghetto and barrio boundaries. There could be an active search in such cases for broad remedies in the future. Systemic problems, such as

gaining access for black brokers to suburban multiple listing services deserve urgent attention. Lawyers could give high priority to cases where there is a reasonable case of obtaining metropolitan school or housing remedies. They should give low priority to actions that might destabilize existing integrated areas or cases where the demographic projections show that no real solution remains without a basic change in the law. Given the complete inadequacy of enforcement staffs for case-by-case enforcement, the most careful attention is needed to define priorities, to target resources, to select cases that will develop the law, and to seek penalties that are strong and visible enough to have a restraining influence on those violating civil rights elsewhere. At the same time it is very important to avoid quixotic efforts that will fuel unnecessary attacks on the agency. Every effort must be made to support neighborhoods and communities that are seeking to stabilize integration in cities where that goal has rarely, if ever, been accomplished.

INTERDEPARTMENTAL COORDINATION

Obviously the greatest influence from the limited efforts of various agencies would be felt if a variety of federal departments could act in concert. If a city were simultaneously investigated by several federal departments, including the Justice Department, and enforcement proceedings threatened a wide spectrum of funds, the leverage for local change would be enormous. Under such conditions, it might also be possible to negotiate a plan dealing simultaneously with schools, housing, and other programs. The barriers to such coordination are considerable. Strong White House and OMB leadership are essential for comprehensive remedies. There are, however, a number of partial steps that could be taken with far less difficulty.

COMMUNICATION OF INFORMATION ABOUT ACTIONS IN PARTICULAR CITIES

A first very simple step would be to establish a common list of civil rights actions and major pending grant decisions by city and metropolitan areas. This would avoid the problem, to cite one recent example, of the Labor Department processing a major grant for the hiring of teachers under CETA at the same time HEW was in the midst of fund cutoff proceedings against the city for unconstitutional faculty segregation.[38] The list of investigations, complaints, and grants affecting a city and its metropolitan area could be kept within bounds by eliminating complaints that affected only an individual or small group and reporting grants only over a reasonable minimum, perhaps $1 million. Information about many of the pending grant applications might be obtained from the local metropolitan area "clearinghouses" that must already review many kinds of grant applications.

STRENGTHENING JUSTICE DEPARTMENT COORDINATION OF TITLE VI

For more than a decade the Justice Department has been responsible for coordinating enforcement of Title VI across the federal government. The effort, however, has always been low priority and understaffed. It has also been legalistic—excessively concerned with case-by-case litigation unrelated to general social policy analysis.

In recent years, the Title VI unit has gained increased staff and authority and has done management studies of a number of the major civil rights staff. Since 1974 the

[38]Interview with David Tatel, January 16, 1978. HEW learned of the action by accident and then the Justice Department Title VI unit helped to work out a coordinated approach to the problem.

Justice Department has had authority to prescribe Title VI enforcement standards for other agencies.[39]

Justice efforts are illustrated by a September 1977 review of the HUD Title VI enforcement program. The report showed, for example, that HUD had not developed an effective policy for insuring consideration of civil rights issues in the processing of community development grants (the key urban program that had replaced the urban renewal model cities, and housing subsidy programs of earlier periods). The HUD offices were found to be understaffed and lacking in basic socioeconomic data on communities and on location of federally assisted housing. HUD field reviews, according to the Justice Department report, were "short and superficial." A great many program applications did not even have required civil rights information entered in the appropriate spaces. In one area, 98 per cent of community development recipients were not keeping the required records. Recommendations by equal opportunity staff were ignored frequently by HUD administrators who approved applications that appeared to violate the law. Most regional offices were operating a program based exclusively on complaint investigation. After eight years of discussion, HUD had still not issued a tenant selection policy for public housing that was likely to produce integration. In fact, it was still not receiving even basic data on racial composition of tenants in individual projects within a city. Many of the staff members were untrained, not even knowing what was required by Title VI.[40]

This extremely critical assessment, which echoed a

[39]Executive Order No. 11,764, 3A C.F.R. 124 (1974 Comp.), reprinted in 42 U.S.C. § 2000d-1 annot., at 3541 (Supp. V 1975).

[40]Federal Programs Section, Justice Department Civil Rights Division, "Interagency Survey Report: Evaluation of Title VI Enforcement at the U.S. Department of Housing and Urban Development," September 1977.

series of earlier reports on HUD by the U.S. Commission on Civil Rights,[41] pointed to massive obstacles to coordination or any real enforcement that exist throughout the government.

Stephen Koplan, head of the Justice coordination unit, reported in early 1978 that Title VI enforcement was almost nonexistent in many agencies. Aside from a number of HEW cases, where a federal court had *ordered* the Secretary of HEW to initiate administrative proceedings, there had only been five fund cut-off proceedings in the entire federal government in a five-year period.[42]

The HUD case illustrates several important problems. First of all, there is a very fundamental incapacity and low priority within the responsible agencies. Before there can be effective coordination, particularly from a position of limited power in another department, there must be a major strengthening within individual agencies. Agencies must also make the decision to enforce the law. Trying to coordinate on a complicated and explosive policy issue with an agency whose staff is untrained, whose data are totally inadequate, and whose recommendations are routinely ignored, is like trying to build a house out of bricks of jello.

Good coordination will require outside intervention from a position of considerably greater power than the Justice Title VI office. OMB is now in the process of reviewing interdepartmental civil rights coordination

[41]The Civil Rights Commission has been commenting in detail on the racial implications of federal housing programs since its 1961 volume, *Housing*. Documentation of the use of funds from the 1968 Housing Act in a way that spread ghettos and destabilized existing integrated neighborhoods was presented in the Commission's June 1971 report, *Home Ownership for Lower Income Families: A Report on the Racial and Ethnic Impact of the Section 235 Program*. The Commission held formal hearings on these issues in Baltimore, St. Louis, and Washington in 1970–1971; in 1975 it issued another report, *Twenty Years After Brown: Equal Opportunity in Housing*.

[42]Interview with Stephen Koplan, January 19, 1978.

within its reorganization project. It might be more useful to transform that study group into an action unit that would insist on the general upgrading of individual programs, including drastic reorganization and restaffing where necessary.[11] Unless the kind of fundamental flaws disclosed in the Justice reviews of HUD and other departments are repaired, the simple fact is that the government has no capacity to operate any kind of serious civil rights policy.

The Justice Title VI unit has attempted to bring together Title VI officials for meetings and has done management studies of several major agencies suggesting a variety of improvements. These have been useful contributions, representing virtually the only effort to stir action from outside of particular agencies. There has been no focus yet, however, on the need to coordinate actions across departments in individual cities. In fact, there is not even such a focus within the Civil Rights Division of the Justice Department itself, where education and housing cases are handled quite separately.

Like its parent Civil Rights Division, the Title VI staff in Justice is fundamentally oriented toward litigation. By early 1978, it had a docket of 12 cases on Title VI violations in a number of departments. The staff director said that his fundamental interest was litigation and that he was frustrated by the 26 agencies under its jurisdiction that were operating some 400 programs. The Title VI staff lacked strong management and analytic capacity and was only beginning to recover from the sharp staffing cutbacks it had experienced in 1974 to 1976.[12]

Unless active presidential involvement moves the

[11] Interview with OMB task force director Jeffrey Miller, March 23, 1978.

[12] Between 1974 and 1976 the staff was cut from 20 to 7 attorneys, from 8 to 2 paralegals, and from 10 to 7 coordinators (Koplan interview).

coordination function to the OMB or the White House staff, the Justice Department must provide far greater resources to its Title VI unit. This unit should insure the development and operation of the system to exchange information across the government. The Civil Rights Division should develop a first-rate professional policy analysis staff much like the staff of professional economists in the Anti-Trust Division. The Division cannot successfully meet its responsibilities by relying on lawyers handling individual cases for all of the major analysis. It needs demographers, sociologists, economists, an urban historian, and other specialists who could provide access to methods of analysis and bodies of knowledge that the Division cannot now tap. This staff would play an essential role in providing background materials for the Assistant Attorney General or any other administration-wide coordinating mechanism.

A first task could be the development of school and housing discrimination litigation and administrative investigations that either take the form of a single consolidated lawsuit, as suggested by William Taylor of the Center for National Policy Review, or simultaneous and related actions filed against the same community or group of violators in a single metropolitan area. In school cases, at a minimum, the department should fully investigate housing violations and propose housing policies that could help support the desegregation plan.

The first concrete interdepartmental coordination task might relate to existing school cases. It would not only be politically feasible but probably quite popular for housing officials to devise a set of neighborhood integration policies that could be offered to a community facing a busing order. Judges would surely respond favorably to proposals for combined school and hous-

ing plans to eventually produce a cut in busing.[45] HUD, HEW, and the Justice Department need to begin coordination in this issue in pending school cases.

A second question concerns the enormous amount of lost energy and time when a case is transferred from investigators in HUD, HEW, or elsewhere to the Justice Department for litigation. Usually the Justice lawyers discount the other department's investigation as inadequate and begin the case all over again.[46] This further limits the possible impact of the Department's small staff and further delays the development of remedies.

Since Congress has removed most of HEW's authority to enforce urban school desegregation and has yet to provide HUD with nonjudicial sanctions for fair housing violations, enforcement in both fields must be through the courts, and the Justice Department must play the central role. Considerable time and effort might be saved if the entire investigation process were organized in a cooperative fashion under the direction of Justice Department case coordinators. Both departments should consider delegating some staff investigators to create a support unit within the Civil Rights Division. If there is neither voluntary delegation of staff nor a grant of sanctions to the departments, the White House should consider such transfers as part of a reorganization plan.

If staff is not transferred, much stronger interagency coordination on cases is essential. In each case, a team headed by the lawyer ultimately responsible for litiga-

[45]Several existing plans, including those in Louisville and Los Angeles already exempt integrated neighborhoods. Although judges would probably be reluctant to issue housing orders without a full trial on the housing issues, they could easily structure the desegregation order so that it would end busing in the future in any community that became substantially integrated through building subsidized housing.

[46]Interview with the then Assistant Attorney General for Civil Rights, John Doar, August 10, 1967.

tion should be formed as soon as the administrative agency determines that there will not be prompt voluntary compliance. Members of these teams could receive special training programs on current judicial standards of proof and current research on urban policy. These teams, and they could perhaps include specially trained FBI investigators, would be far more likely to produce evidence directly useful in litigation, thus saving duplication of effort, frustration of victims of discrimination, and very lengthy delays. The teams would be particularly useful when they could carry out simultaneous school and housing investigations and formulate mutually reinforcing strategies.

When the team is prepared to file a lawsuit it might be expanded to include members of civil rights agencies in other departments considering major grants or with pending civil rights complaints. They could be a valuable source of information and ideas about remedies, and the information they receive might also help shape their own investigations and enforcement actions. If the community decided to negotiate, the case team would offer a vehicle to negotiate a general desegregation plan satisfying all outstanding problems.

TITLE VIII COORDINATION

Another major enforcement task is the general coordination of urban policy from a civil rights perspective. Broad language in Title VIII of the 1968 fair housing law, which requires that all federal programs be administered in a way that furthers nondiscriminatory housing patterns, makes the Secretary of HUD responsible for such coordination. President Johnson directed that coordination be initiated in 1968. There have been some desultory efforts in the meantime. The federal courts have found that the law's broad injunction to administer all programs in a way intended to further the

purposes of residential integration is a command for decisions favoring integration.

The present state of Title VIII enforcement makes the Title VI record seem one of splendid achievement. Former HUD Assistant Secretary Chester McGuire said that although HUD believes that all agencies administering urban programs should issue Title VIII regulations, HUD is still the only department that has even taken this formal step. "Without regulations," he said, "it's too futile to even try to get cooperation and coordination." McGuire said that there was no pressure from the White House or the OMB for the development of regulations. Even within HUD itself, McGuire said that enforcement was on a "catch as catch can basis" with data so inadequate that his office is "not really" able to determine whether HUD is violating Title VIII. Like many of the officials interviewed, McGuire reported very little interdepartmental communication, a desire for more, and a strong belief that OMB or White House pressure would be necessary to change the existing situation.[47]

McGuire has recently been replaced by a new Assistant Secretary, Sterling Tucker, who brings extensive governmental experience to the job. It is still far too early to assess Tucker's record. HUD is now actively working for legislation strengthening Title VIII.

If there was any serious attempt to enforce the law, one would expect a significant analytic capability in HUD that would have made itself felt in the massive exercise of the Carter Administration in the development of urban policy. In fact, HUD still has not pro-

[47] Interview with Chester McGuire, January 19, 1978; in fact some important exploratory evaluation of the racial impact of HUD's subsidized housing is now under way in McGuire's office under the direction of Zina Greene and Mary Pinkard, but far greater resources will be necessary for any definitive answers.

duced even the basic data on segregation on its own programs after eight years of promises. Even after Civil Rights Commission studies found that segregation was being reinforced by the programs of the early 1970s and Secretary Romney ordered the collection of racial data, the job was poorly done and the data were not analyzed.[48] HUD still has no idea whether its programs have intensified segregation in the 1970s and whether its present plans will intensify segregation in the 1980s.

There has been no serious consideration of the racial consequences of the block grant programs or of the shift of subsidized housing to the private market. Although the President's long-awaited 1978 urban policy statement did promise to enforce civil rights, it did not consider segregation a basic urban problem. White House policy makers say that the issue of busing was not even considered in the policy deliberations though it is surely one of the most salient questions in urban America.[49] During a period when the quality and racial composition of urban schools is surely one of the dominant forces in residential decisions of young white families, a policy emphasizing the need to retain and expand the urban middle class simply ignored the issue. HUD must develop the capacity to analyze these questions and take leadership in developing reporting systems and commenting on program evaluation in other departments. Once this capacity is developed there will be a major challenge to try to use it effectively. Until it is developed, Title VIII coordination will be a useless exercise.

[48]The record of successive requests, HUD promises, and failures to produce needed data is summarized at length in the Justice Department's "Interagency Survey Report" on HUD Title VI operations.

[49]Ranking White House officials, including presidential aide Jack Watson, told Los Angeles reporter Robert Sheer that the issue had not been discussed when the urban policy was developed. (*Los Angeles Times*, June 18, 1978).

RECENT DEVELOPMENTS

Since this paper was first prepared and discussed in Washington there have been a number of signs of interest in coordinated civil rights enforcement and some significant policy or organizational initiatives. The OMB study of general civil rights coordination problems has produced tentative recommendations that would substantially strengthen the role of the Justice Department and establish a permanent civil rights staff within OMB itself to assure informed examination of civil rights performance in the annual budget review process. The OMB task force director, Jeffrey Miller, reports that the budget agency is already moving toward serious substantive review of agency civil rights performance.

Within the Justice Department there have been two significant positive developments. The Housing and Education sections of the Civil Rights Division have been combined and the Division is reported to be actively interested in combined school and housing litigation. Title VI administrative coordination has been separated from Title VI litigation to permit more consideration of improved administrative enforcement processes.

The developments most directly related to urban enforcement have come in HUD and HEW. The Administration has publicly conceded that the 1968 fair housing law is too weak for effective enforcement and is supporting legislation to give HUD enforcement powers. The administrative problems of fair housing enforcement in all federal agencies have been extensively documented in a new 1979 Civil Rights Commission report. An OMB proposal that Justice assume responsibility for coordinating interagency fair housing efforts has been heatedly opposed by HUD leadership,

which insists that an expanded staff under new leadership could do the job. The HEW Office for Civil Rights is actively exploring the possiblity of coordinated interagency remedies in the pending Chicago school desegregation case. Coordinated school and housing remedies have been recommended by court-appointed experts in the Los Angeles case. The climate is ripe for a major initiative.

THE LIMITS OF BUREAUCRATIC INITIATIVES

Interagency coordination is a very useful goal in enforcing desegregation requirements in urban areas. Nothing weakens support for desegregation like incoherent, senseless, or mutually contradictory enforcement strategies. On an issue where each agency feels very highly vulnerable, joint action could provide mutual support and would be more likely to lead to a local decision that accommodation was unavoidable. Such action would also aid the courts, both in removing some of the political heat and in formulating better remedies. To the extent that the federal agencies could offer choices that were less unpopular than busing, they might actually be seen in a modestly favorable light.

The fundamental fact is, however, that it will be impossible to build a successful long-term set of tactics without a strategy. There must be a clear set of goals and a clear sense that these goals are important enough to face the inevitable political resistance. Clear goals and clear decisions to enforce them can come only from the leadership of an administration—the President, his personal staff, Cabinet members, and OMB. The Carter Administration has a number of policy makers within agencies who are seriously concerned about this problem, but there has been no real push for action to overcome normal bureaucratic inertia and agency insularity.

It took a society in which there was a virtual consensus for segregation within the dominant racial group a half century to build a full-blown ghetto system. It will not be ended by accident or by wishful thinking. If the responsible officials of this Administration follow the normal practice of ignoring the question and hoping that some future administration will provide leadership, there will be little, if any, change. The cost for the future of American society may be incalculable.

Mounting a Concerted Federal Attack On Urban Segregation: A Preliminary Exploration

by WILLIAM L. TAYLOR

An axiom of long standing among civil rights practitioners is that problems of racial discrimination in many areas—particularly education, housing, and employment—are inextricably linked and that true equality of opportunity can never be attained in one area without eliminating discrimination in other areas as well.[1] The policy implication of the axiom is that all areas of discrimination must be attacked at the same time—that efforts to eliminate discrimination in education, for example, cannot be deferred until progress is made in halting job discrimination.

But in calling for a simultaneous attack on related problems of discrimination, civil rights advocates have not suggested a need to consolidate attacks on housing, school, and job issues into a single legal proceeding or program. Civil rights laws are not structured to encourage such a consolidated attack. Federal civil rights laws place in different agencies the major responsibility for preventing and redressing discrimination in each area. Thus, the Department of Health, Education and Welfare (HEW) has the principal responsibility for dealing with discrimination in federally supported education programs. It is the duty of the Department of Housing and

[1]So it has been pointed out, for example, that equal job opportunity cannot be fully achieved without elimination of discrimination in public schooling, which will help equalize the skills that young people bring to the job market, and that equal housing opportunity cannot be wholly realized without eliminating job discrimination so that minorities will have better incomes with which to compete in the housing market.

Urban Development (HUD) to prevent discrimination in housing (whether federally supported or not). The Equal Employment Opportunity Commission is the major agency accountable for dealing with discriminatory employment practices.

The only federal enforcement agency with broad jurisdiction over housing, jobs, and education is the Department of Justice, which has statutory authority to initiate court litigation to redress discrimination in each of these areas. Within the Department of Justice, however, separate units in the Civil Rights Division deal with housing, employment, education, and other matters, and no effort has been made to merge these activities to seek multiple remedies within a single lawsuit.[2] Under most state statutes, unlike federal laws, jurisdiction to enforce antidiscrimination provisions is vested in a single commission or agency. Like the Department of Justice, however, these agencies are structured to handle each subject area separately.

The issue posed for exploration in this paper is whether in some situations it would make sense to go beyond the present compartmentalized approach in order to seek multiple remedies in the same legal proceeding and, if so, what would be the best means for achieving such a coordinated attack on discrimination problems. Specifically, would a coordinated approach provide advantages in dealing with the closely linked problems of segregation in public schools and in housing in metropolitan areas?

The argument for such an approach runs roughly as follows. Under current legal standards, a finding of extensive discrimination throughout a public school

[2]After this paper was first written and shared with the Justice Department, the Department decided to merge its housing and education sections into a single civil rights unit.

system calls for a system-wide remedy,[1] which usually means extensive busing. Busing is generally unpopular and is under attack in Congress and other quarters. While busing may be necessary as a short-term remedy for school segregation, most people agree that in the long run integrated schools that are a product of integrated neighborhoods are a more desirable alternative. It may be true that there is almost as much resistance to housing desegregation as to school desegregation. But if school desegregation could be accomplished within a community, seemingly nonracial objections to desegregation that requires busing—e.g., that parents are deprived of the ability to select schools for their children by selecting housing—would be eliminated.

Accordingly, it would make sense to attack school and housing discrimination in a metropolitan area in the same legal proceeding. This would result in a dual remedy. School authorities would be ordered to desegregate the public schools immediately under a plan that in most instances would require substantial busing. Housing authorities would be ordered to take immediate steps to provide opportunities for nonsegregated housing throughout the area. While the housing remedy would require more time (since control over housing is far more fragmented than control over public schools and since housing solutions may require capital outlays for construction or rehabilitation), concerned parents and students would have the assurance that gradually busing would phase down as more and more school desegregation is accomplished by residential integration.

[1] See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Keyes* v. *School District No. 1 of Denver*, 413 U.S. 189 (1973). Cf. *Dayton Board of Education* v. *Brinkman*, 433 U.S. 267 (1977).

THE LINK BETWEEN SCHOOLS AND HOUSING IN PRIVATE CIVIL RIGHTS LITIGATION

Because federal civil rights law is structured to encourage the discrete handling of problems of discrimination, most lawsuits brought by individuals and civil rights groups have been directed toward a single end, e.g., the desegregation of public schools, or the end of discrimination in selecting sites for publicly assisted housing and in assigning tenants to such housing. Suing on only one front is not mandated by law: there is no bar, for example, to a lawsuit in which a group of public housing tenants might seek injunctive relief against both the officials who assigned them to segregated public housing and the school authorities who assigned their children to segregated public schools. But with a couple of exceptions (to be discussed later) this has not been done.

HOUSING EVIDENCE IN SCHOOL CASES

When evidence of housing discrimination is brought into school desegregation cases, the purpose ordinarily is only to support the request for school relief. In a typical northern or western school desegregation case, plaintiffs will claim that the school board engaged in practices that produced racially segregated schools—for instance, the gerrymandering of the attendance area. Defendants will claim that segregation in the schools is a result not of their discriminatory practices but of segregated residential patterns. Plaintiffs, in anticipation of this defense and to bolster their claim for school desegregation, will assert that to the extent that school segregation is a product of residential separation, government fostered it through segregative practices in publicly assisted housing and by condoning the discriminatory activities of private developers and real estate brokers. They may also testify that curing the

housing discrimination would take years and, therefore, that a prompt school remedy[3] is needed if the current generation of minority students is to gain any benefit.

The Supreme Court has not yet ruled authoritatively whether school desegregation may be required simply because government discrimination in housing helped create segregated neighborhoods.[4] One member of the Court, Mr. Justice Stewart, however, has suggested that proof of government involvement in housing discrimination would support a metropolitan school desegregation remedy.[5]

THE IMPACT OF SCHOOL DESEGREGATION REMEDIES ON HOUSING PATTERNS

Whether or not housing is an explicit factor in school desegregation cases, school remedies can have an impact on housing patterns. A negative effect widely discussed is that of "white flight" and resegregation. Where school desegregation plans are of limited geographic scope (e.g., covering only the central city of a metropolitan area) and white parents by moving can escape the perceived undesirable effects of their children being reassigned for purposes of desegregation, they may do so. Within a single district, courts may seek

[3] In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Court reserved the question for future consideration because it found sufficient evidence of discriminatory acts by school officials to require a thorough remedy. While the Court did not discuss the impact of segregative housing practices on schools, the opinion does contain a discussion of how the siting of schools can influence housing patterns. "People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of development of a metropolitan area and have important impact on composition of inner city neighborhoods."

[4] Justice Stewart said that a cross-district school remedy may be justified if state officials "had contributed to the separation of the races... by purposeful racially discriminatory use of state housing or zoning laws" (*Milliken* v. *Bradley*, 418 U.S. at 755). But he was unpersuaded that the disparities in the racial composition of the public schools of Detroit and its suburbs was due in significant measure to government discrimination in housing.

to minimize the damage to desegregation plans that occurs when residential patterns change by requiring yearly adjustments for a period of time to maintain the desegregated character of the schools. But when parents move to suburbs or place their children in private schools, courts have little control.

A positive effect of school desegregation orders on housing patterns has been less widely noted. Typically, a comprehensive school plan will require the elimination of virtually all one-race or racially identifiable schools in the area. This generally requires the pairing of schools in all-white and all-black residential areas, with white children being bused to schools in black neighborhoods for part of their school careers and vice versa. Often, however, school desegregation plans exempt from transportation requirements neighborhood areas that are integrated enough to permit schools to be desegregated without imposing busing.

Such provisions pose an interesting choice for parents. For example, people in a predominantly white neighborhood may come to recognize that the addition of a relatively small number of black families to the area may result in an exemption from the plan's requirement that students be assigned to distant schools to accomplish desegregation. Although not well documented, it is frequently reported that communities faced with this situation consciously make efforts to bring themselves within the exemption by promoting a degree of residential integration, e.g., by accepting some federally subsidized housing for moderate-income minority families.

When court-ordered metropolitan school desegregation came to the Louisville-Jefferson County schools in 1975, the Kentucky Human Rights Commission sought consciously to exploit the positive potential. A pamphlet entitled *Six Ways to Avoid Busing* listed schools that were exempt from busing requirements because the

school population of the neighborhood fell within the range (12 to 40 per cent black) called for by the court's decree. It also listed nearly exempt schools with the number of white or black pupils needed to make the area exempt. The Commission appealed directly for action to increase residential integration, pointing out that one additional black child in a formerly white school "desegregates" three white pupils as well and can reduce the need for transporting white pupils for desegregation. Two years later, the Commission reported that its efforts, which included providing housing counseling to minority families, had met with a degree of success. It noted that the very fact of desegregated schools had helped encourage black families to move to previously all-white neighborhoods.[6]

In a sense, the quest for combined school and housing relief in a single lawsuit would be an effort to realize more fully this positive potential by consciously designing housing strategies to complement the school desegregation relief. An intermediate approach would be to build on the Kentucky Human Rights Commission strategy by having HUD take positive action after a school desegregation order to promote low- and moderate-income subsidized housing and affirmative marketing of private housing.

SCHOOL AND HOUSING RELIEF IN THE SAME CASE

While evidence of government involvement in housing discrimination is commonly introduced in school cases

[6]Kentucky Human Rights Commission, *Housing Desegregation Increases as Schools Desegregate in Jefferson County* (Louisville 1977). The Commission reported a 63 per cent increase (from 3,948 to 6,451) in the number of black children residing in Jefferson County since 1974 (the year before the metropolitan school plan went into effect). Most of the increase took place outside of suburban residential areas where blacks were already concentrated. Moreover, the city and county had agreed to operate jointly the federally assisted Section 8 program that provides rent subsidies. Through 1976, 266 limited-income black families had used Section 8 to relocate in desegregated housing.

to support a school remedy, only two cases have gone beyond this point to consider housing discrimination evidence as a basis for combined school and housing relief. In one case, *Hart* v. *Community School Board of Education, N.Y. District #21,* black schoolchildren sued New York City public school authorities, seeking to desegregate the Mark Twain Junior High School. The defendants brought city, state, and federal housing officials into the case, claiming that their actions in building segregated public housing in Coney Island resulted in segregation at Mark Twain. The federal district judge, in holding the school authorities liable for the segregation, did not find the housing defendants culpable, but kept them in the case for purposes of considering relief. While a special master appointed by the judge considered housing as well as school relief, the only remedy ordered was the desegregation of Mark Twain. On appeal, the decision not to award relief against the housing defendants was upheld on technical grounds.

Underlying the technical decision, however, were doubts about the manageability of an enlarged case involving both school and housing remedies. The Court of Appeals noted that the third-party complaint "succeeded initially in getting the district judge to convert a narrow issue involving a single junior high school... of about 1,000 students into what could only become an issue so broad as to defy judicial competence, a matter which would require coordinated legislative and executive action by three governments, federal, state and city, for a solution" (512 F.2d at 41). The appellate court noted that the district judge had acknowledged that the judicial decree "tool is poorly designed for restructuring an entire community" (383 F.Supp.at 775). It commended the willingness of the housing officials to cooperate voluntarily in a remedy, but found it hard to see why a

federal district judge "should superintend so vast a series of continuing enterprises..."(512 F.2d at 56).

In the second case, *United States* v. *Board of School Commissioners of City of Indianapolis*, the housing issue arose after school officials were held culpable for widespread segregation within Indianapolis. When the case was broadened to determine whether the circumstances called for a metropolitan remedy, the school commissioners brought the city housing authority in, claiming that the authority was at least partly responsible for the metropolitan character of school segregation. Evidence showed that all ten low-income housing projects built between 1966 and 1970 were located inside Indianapolis, that all opened 50 to 75 per cent black and quickly became 98 per cent black, that Marion County had refused to allow construction of public housing outside the city, and that even after 1969, when no county consent was necessary because the state legislature had adopted a metropolitan form of government for the Indianapolis area, public housing was not built in the suburbs. The district judge found that housing discrimination was the principal explanation of why 95 per cent of the black residents of Indianapolis lived inside the city and that the location of public housing had caused and perpetuated the segregation of children within the city. He enjoined the housing officials from building additional public housing within the city and the Court of Appeals upheld the injunction on grounds that the housing officials had unconstitutionally contributed to disparities in the residential and school population between the suburbs and the city (541 F.2d at 1222-23).

The courts in the Indianapolis case unlike the Court of Appeals in the *Hart* case, were apparently unconcerned about problems of judicial manageability that might attend the presence of housing officials in the case. Presumably this was because the injunction the district

court was considering was wholly prohibitory—simply stopping the housing authority from building more units in the inner city. It should be recognized that what is gained by a negative injunction in simplifying the proceedings is at least partially offset by a loss of effectiveness. If the final housing remedy in Indianapolis remains the same,[7] housing officials will be prevented from destabilizing the school desegregation remedy by building in racially concentrated areas, but the remedy will not make any positive contribution or lessen the need for busing by assuring the construction of publicly assisted housing that will desegregate neighborhoods.

DIFFICULTIES OF SECURING COMBINED RELIEF IN PRIVATE SUITS

The discussion above suggests some of the difficulties confronting private civil rights litigators in considering efforts to obtain combined remedies. School desegregation suits, especially those in urban areas, are often long, complex, and costly affairs, which may take five years or more between the filing of the action and the actual implementation of a plan.[8] If the dimension of housing relief is added, the case is bound to become more complicated. Since it would require adding a new group of officials as defendants with a full opportunity to contest the evidence and proposed remedy. If the context is a metropolitan desegregation suit with multiple suburban school defendants, a judge may well feel he is being called upon to superintend "a series of

[7] The case is still in litigation because the Supreme Court sent it back to the lower courts for further consideration of whether the acts of interdistrict discrimination were intentional (429 U.S. 1068 [1977]).

[8] Where unsettled legal issues are involved, the time may be longer. The effort to achieve metropolitan school desegregation in Wilmington, Delaware, began in 1970, and a plan was implemented in the fall of 1978. Indianapolis began as an intradistrict case in 1968, the metropolitan issue was first raised in 1971, and the case still has a long way to go.

continuing enterprises" so vast as to be judicially unmanageable.

In addition, it should be recognized that as difficult as school desegregation is, securing meaningful housing relief may be harder. Much housing discrimination is of a private character and, while violative of federal fair housing laws, is not the appropriate subject of attack in a lawsuit dealing with government's role in fostering school and housing segregation. Even if private developers, landlords, and brokers could be joined in such a suit, the relief to be obtained against them would necessarily be of a piecemeal character.

When government involvement in housing discrimination is considered, it must be recognized that the blatant practices of past years (e.g., the role of the Federal Housing Authority in fostering the growth of all-white suburbs through racially restrictive covenants) have been replaced by more sophisticated techniques. The Supreme Court has been at some pains to point out that its concern under the Constitution is only with racial, not economic, discrimination. Zoning and restrictive land-use devices that exclude minorities from suburbs by shutting out low-income housing will not be deemed a violation of equal protection guarantees unless implemented in a racial manner.[9] States are under no federal obligation to establish public housing authorities in suburban areas, and such authorities, even when established, are under no obligation to build units for the poor and minorities. Again, it is only where it can be demonstrated that the actions of local housing authorities are governed by racial considerations that

[9]See, e.g., *James* v. *Valtierra*, 402 U.S. 137 (1971); *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). Under Title 8 of the Civil Rights Act of 1968, however, exclusionary practices that have a disproportionate impact on minorities may be unlawful even if not racially intended.

new housing opportunities for minorities may be ordered.[10] Suburbs that receive federal largess in the form of community development funds are under a statutory duty to meet the housing needs of their low- and moderate-income citizens and others who may be expected to reside there because of employment opportunities, but even when suburban communities take this obligation seriously, the great bulk of the new housing opportunities often goes to white people—the elderly, and underpaid teachers, police officers and fire fighters.

As a result of these constraints, only a handful of housing discrimination cases have produced court orders requiring that substantial new housing opportunities be made available to low-income minority families. Perhaps the most interesting and encouraging result was that obtained in the *Gautreaux* case. There, minority tenants of public housing proved that the Chicago Housing Authority engaged in racial discrimination by confining public housing projects to ghetto areas and that HUD acquiesced in these policies. The remedy was to provide housing opportunities for low-income minority families outside areas of racial concentration. Although no case was made that suburban public officials had engaged in racially exclusionary policies, HUD's legal culpability has meant that new housing opportunities could be made available in the suburbs through a federally assisted counseling program and HUD's use of Section 8, its moderate-income subsidy program, to induce suburban developers and landlords to accept minorities. The new housing opportunities for some 500 minority families that have come about so far under the *Gautreaux* order may not appear to be a very impressive yield for a decade of effort in the federal courts. But *Gautreaux* is one of the few examples

[10] See, e.g., *Hills* v. *Gautreaux*, 425 U.S. 284 (1976); *Crow* v. *Brown*, 332 F.Supp.382 (N.D. Ga. 1971), affirmed *per curiam*, 457 F.2d 788 (5th Cir. 1972).

of a successful effort to secure unsegregated housing for low-income minority families and it is likely that it can be replicated elsewhere in far less time than it took to establish the original principle.

A FEDERAL EFFORT FOR COMBINED RELIEF?

Many of the barriers to combined school-housing relief cited above might be eased if the federal government took responsibility for achieving it. Federal civil rights agencies have a far greater capability than private litigants to carry out the extensive investigative work needed to establish a basis for metropolitan school-housing remedy. The judicial manageability problem might be alleviated if the federal government sought to achieve a remedy through *administrative* enforcement, i.e., proceedings to withhold federal funds from recipients of school and housing aid until the violations were cured. While it is likely that any such federal undertaking would be challenged in court, judges could lean (as they frequently do in civil rights cases) on the expertise of federal civil rights agencies in establishing legal standards and helping to frame remedies.

Assuming its desirability, the question is how such a federal effort could be mounted. The threshold difficulty is the one noted previously: under existing civil rights laws, the responsibilities of federal agencies are so discrete as to generally preclude them from investigating and seeking relief across subject matter lines.

For example, the principal responsibility of the Office for Civil Rights in HEW is to deal with discrimination on the part of recipients of federal funds under HEW programs. In the area of education, such funds ordinarily go to school districts. In conducting an investigation of discrimination by a school district, HEW, following the views expressed by Mr. Justice Stewart in *Milliken*, might well investigate the extent to which government

involvement in housing discrimination contributed to school segregation. But having found housing discrimination, HEW could not redress it, since any funds implicated would ordinarily come not from HEW but from HUD or other agencies.[11] HEW's recourse would be to refer its findings regarding housing discrimination to the Justice Department for a possible suit or to HUD for possible administrative enforcement action. Either agency would undertake an investigation of its own before beginning enforcement proceedings. Similar constraints would apply to HUD in exercising its responsiblity to prevent discrimination in the use of housing and community development funds. Accordingly, if the quest for a comprehensive, coherent remedy to eliminate housing and school segregation is to be realized through the initiative of federal agencies, some mechanism is needed to coordinate or integrate the necessary investigations and enforcement proceedings.

EXPERIENCE WITH COORDINATION

The problem of achieving coordination in federal civil rights enforcement is not new. Soon after enactment of the Civil Rights Act of 1964 it was recognized that since every agency that dispensed federal funds had been given the duty to prevent discrimination in the use of the aid, there was a real danger that agencies might trip over each other in carrying out their responsibilities. The most common form of the problem arises from the fact

[11] In fact, HEW is now under tight restrictions imposed by Congress even in fashioning an adequate remedy for unlawful school segregation. Under the Eagleton-Biden Amendment, even when an HEW investigation reveals an extensive violation of Title VI that would require busing to remedy, the agency is precluded from conditioning federal funding on the adoption of a desegregation plan that calls for busing past the closest school. HEW's only option is to refer such a case to the Department of Justice for suit. The constitutionality of Eagleton-Biden is now under challenge in the federal courts.

that a single institution may receive federal funds from several federal agencies. If, for example, the higher-education system of the State of North Carolina continues to maintain largely segregated colleges and universities, the funds of several federal agencies (HEW, the Veterans Administration, the National Science Foundation) may be implicated in the discrimination. If each agency conducted its own investigation, conflict and confusion could result.

The vehicle designated for resolving such problems is the Department of Justice, which for the past decade has had responsibility under Executive Order (the current one is EO 11764) for monitoring and coordinating Title VI activities. Under the original Executive Order, the Justice Department issued guidelines [28 CFR 50.3, Part V (Coordination)] providing that it be notified of hearings and other enforcement actions. In 1966, Justice issued three coordination plans developed by the interested agencies covering medical facilities, institutions of higher education, and elementary and secondary school systems. Each of the plans was designed to eliminate duplication by having one lead agency (HEW in all three cases) assume responsibility for collecting compliance data, investigating complaints and initiating compliance reviews, determining the existence of violations, and seeking to negotiate settlements. The other agencies then formally delegated authority to HEW.

Under the delegation agreements, HEW handles enforcement activity in each area up to the point where formal enforcement proceedings are begun. At that point, HEW may ask the other funding agencies for a delegation of authority to conduct a hearing for them, which means in practical terms that HEW takes responsibility for proving the violation in a hearing conducted by an administrative law judge appointed under its procedures. Generally such authority is granted.

Once the administrative law judge issues findings and recommendations, his other decision is appealable up to the head of the agency, who makes the final administrative decision on whether funds are to be terminated. Agency review is not delegated; a recipient found in violation by an administrative law judge would take appeals to each of the agency heads from which funds are received.[12] While splintered appeals raise the possibility of conflicting decisions on the same facts, very few proceedings reach this stage.

No major problems appear to have arisen in the implementation of these arrangements for coordination. The reason may be that, when the arrangements involve agencies with almost identical enforcement responsibilities, they have ceded almost all authority to one of their number when dealing with the same recipients. In contrast, when the enforcement duties are somewhat different and each agency of necessity must continue to play a role in the process, efforts at coordination have proved much less successful.[13] The U.S. Civil Rights Commission has found that coordination of this kind is usually done only on an ad hoc basis and that even when formal procedures are established they are usually ignored. Among the consequences are failures to

[12]The power to make the final agency decision on terminating or withholding funds may not be legally delegable. Title VI provides that in the case of an action terminating funds, the head of the federal department or agency "shall file with the appropriate committee of Congress a full written report of the circumstances and the grounds for such action" and shall wait 30 days before making the termination effective. This language implies that the agency head must at least make an independent review of any finding of discrimination.

[13]One example involves the responsibility of the General Services Administration under EO 11512 to cooperate with other federal agencies in determining the social and economic impact of proposed sites for federal installations. In 1971 GSA signed an agreement with HUD that the latter would investigate the availability of low- and moderate-income housing on a nondiscriminatory basis near proposed sites and report to GSA. By all accounts, the agreement has been a failure. HUD reports have been inadequate and GSA has ignored the information they do contain.

exchange relevant information, inconsistent standards, duplicative or overlapping investigations, and inconsistent findings.

Absent a change in law, an effort to use Title VI authority to deal simultaneously with problems of housing and school segregation in the same urban area would necessarily involve coordinated action rather than a simple delegation of authority. (Apart from legal problems, there are problems of the necessary expertise. HUD civil rights investigators are unfamiliar with problems of discrimination in public school systems, and HEW knows little about housing discrimination.) The history of federal efforts at civil rights coordination does not bode well for a new endeavor.

WHAT WOULD A CONCERTED APPROACH ENTAIL?

The key to an effort under existing law to achieve combined relief would be the identification of jurisdictions to be targeted for a joint or simultaneous review of housing and school discrimination. HEW and HUD would share information on urban areas where levels of segregation in public schools and in federally assisted housing are very high or where there is other information indicating the existence of violations. The two agencies would then agree on areas to be made the subject of housing and school compliance reviews within the same time period.[14] While it is not crucial that the reviews be jointly conducted, coordination in timing would be required to assure that each review was completed at roughly the same time. Information ob-

[14]HEW now prepares a civil rights enforcement plan in which it decides on the allocation of its resources before each new fiscal year, indicating, e.g., the number of compliance reviews it anticipates to investigate particular forms of discrimination. While the published plan does not name jurisdictions that are to be investigated, HEW planning does include an identification of targets. HUD has no comparable planning process.

tained during the course of the reviews would have to be shared by the two departments.

If each review revealed violations, joint negotiating sessions would be scheduled by HUD and HEW with all of the local officials implicated in the violations. The aim would be to work out an agreement in which the housing and school relief would be mutually supportive. If negotiations failed to produce an agreement, matters would become more complicated. Each agency would then initiate administrative enforcement proceedings. There appears to be no bar to a merger of the actual hearing, with the two departments jointly designating a single administrative law judge to hear the case concerning each set of respondents. If, however, the administrative law judge found for the federal government, appeals would proceed separately through the heads of each department.

WHO WOULD COORDINATE ACTION?

Experience suggests that coordination of the type outlined above is not easily achieved by the agencies (in this case HEW and HUD) having parallel responsibilities. Under the current scheme of civil rights enforcement, logically the task of initiating and supervising an effort to obtain combined housing and school desegregation remedies would fall to the Department of Justice. As noted, the Attorney General is responsible for coordinating Title VI enforcement and has authority to set standards and to aid other departments in enforcing the law. Undoubtedly, then, Justice could convene a series of meetings with HEW and HUD to plan a joint attack on problems of school and housing segregation. While each agency would retain its own ultimate enforcement authority, Justice could actively enlist their cooperation in targeting investigations and assuring consultation and coordination at each step of the way.

While Justice has the legal authority, whether the Department could be induced to exercise such leadership is more doubtful. Although the Attorney General has had responsibility for more than a decade to provide leadership in Title VI enforcement, the record is largely barren of achievement. One reason is that in civil rights, as in other areas, cabinet departments operate as principalities, each jealous of its own prerogatives, as reluctant to invade the sovereignty of others (for fear of suffering like treatment) as to accept interference from without. Thus, even where the President designates a "lead agency" to exercise leadership, the agency often proceeds in the most gingerly way. Where it does not, it usually encounters resistance.[15]

In the case of the Justice Department and Title VI, another impediment to strong leadership has been the negative attitude of Justice officials toward administrative enforcement of civil rights. Many Justice lawyers tend to regard themselves as the only true professionals in civil rights and to regard litigation as the only effective method of redressing discrimination. As a result, Justice often has viewed flaws in the Title VI programs of agencies not as a challenge to upgrade personnel and procedures but as a reason to discourage administrative enforcement. Where agencies have come up with solid evidence of violations, they have sometimes found Justice urging them to turn the case over for litigation by Justice rather than to pursue administrative remedies.

The "reluctant dragon" posture of the Justice Department had led civil rights groups to urge that other measures be considered for achieving coordination and

[15]The history of the Model Cities program provides another example of the difficulty of achieving an objective with one agency seeking to coordinate the exercise of divided authority. See Frieden, Bernard J. and Kaplan, Marshall, *The Politics of Neglect: Urban Aid from Model Cities to Revenue Sharing* (M.I.T. Press, 1975).

more uniform standards in administrative enforcement. For years it has been urged that the Executive Office of the President and the Office of Management and Budget develop a greater capacity to evaluate the civil rights performance of agencies and to command changes where needed. OMB has resisted such responsibilities. The Civil Rights Commission has urged that the ten Federal Regional Councils—bodies consisting of the chief regional officials of the 11 major federal grant-making agencies that are charged with rationalizing grant administration in the field—be given responsibility for coordinating civil rights enforcement in the regions. But studies have suggested that the Councils, lacking strong direction from the Office of Management and Budget, have not been very effective in performing their assigned tasks, and there is no reason to suppose they would do better in civil rights.[16]

Over the past year the Justice Department has begun to pursue its Title VI coordination responsibilities with more vigor. Following a statement by President Carter supporting the use of Title VI administrative sanctions, Justice convened a meeting of Title VI agency personnel and has been pressing the agencies to eliminate delays in the handling of complaints and other impediments to effective enforcement. Still it is a long way from this type of activity to the more forceful intervention by Justice that would be needed to mount a joint attack on the problems of housing and school segregation in metropolitan areas.

[16]See Derthick, *Between City, State and National* (Brookings Institution, Washington, D.C., 1973). While OMB provides whatever glue exists in the operation of the Regional Councils, Derthick says that OMB officials have proceeded cautiously because of a wish to maintain institutional neutrality and an inability to commit the prestige of the presidential office to stronger actions. OMB prepared an options paper for President Carter on the Regional Councils in September 1977. He requested a more detailed study to be completed in August 1978, but no major changes have been made.

A JUSTICE DEPARTMENT LAWSUIT?

A role that the Justice Department might find more congenial than the coordination of an administrative attack on housing and school segregation is the development of its own lawsuit alleging violations in both areas and seeking combined relief. Such a suit could be developed entirely with the use of its own resources simply by calling upon the staff of the recently merged Housing and Education sections of the Civil Rights Division to work together on an investigation and the preparation of a complaint.[17] A Justice lawsuit might pose problems of judicial manageability similar to those that concerned the Court of Appeals judges in the *Hart* case. But the government has more resources than private plaintiffs to help courts solve this problem. It is possible, too, that a strong case developed by Justice would be settled before going to trial.

Finally, it should be noted that some elements of housing relief can be implemented by the federal government even without obtaining an order that local housing officials have violated the law. Let us suppose, for example, that the Justice Department developed a case for interdistrict school desegregation of the kind that private litigants have pressed in Wilmington, Delaware.[18] Such a case might well include evidence that local housing officials, with the support and assistance of HUD, contributed to the segregation of public schools by building low-income housing for minorities

[17] Of course, the civil rights units of HEW and HUD could provide aid in developing evidence for such a suit.

[18] Up to now, the case for metropolitan school desegregation relief has been pressed almost exclusively by civil rights groups representing minority plaintiffs and by central city school boards. In Indianapolis, a case initially brought by the United States to obtain an intradistrict remedy, the Justice Department now seems prepared to support some form of metropolitan relief.

only in minority neighborhoods. Even before establishing this proposition in court, the government would be in a position to prepare a *Gautreaux*-type housing remedy. As an adjunct to school desegregation relief, the government could work with private civil rights groups to initiate a counseling program and with private developers to provide new Section 8 housing opportunities for minorities in the suburbs. This could have the same positive impact that occurred in Louisville with the additional advantage of being planned in advance.

THE POLICY-POLITICAL PROBLEM

Underlying the problems of legal authority, management, and administration involved in mounting a concerted federal attack on urban segregation is a more basic question of Administration policy and political will.

If the Carter Administration were commited to an effort to end or ameliorate the condition of racial apartheid that exists in large urban areas throughout the country, means would more easily be found to overcome the difficulties addressed in this paper. Thus far, there is little evidence that the continuing (and in some places worsening) situation of racial separation is a matter of serious concern to the Administration. The Administration's "urban initiative" is almost silent on questions of race and class segregation and the need of minorities for access to services, housing, and jobs outside the inner city.[14] Instead, the focus is on incentives designed to stem the outflow of jobs and to bring some back to the city. The silence on segregation and the emphasis on job incentives and programs in the central city at least

[14]Since this paper was first written, the Administration has decided to give active support to legislation designed to improve administrative enforcement of the fair housing law by authorizing HUD to issue cease and desist orders to halt discriminatory practices.

implies that the Administration accepts the status quo. While the rhetoric on civil rights of some high officials, such as Secretary of Housing and Urban Development Patricia Harris and Secretary of Health, Education, and Welfare Joseph A. Califano, is good, it has not been translated into policy.

Accordingly, the initial task of Administration civil rights officials and private groups is to convince the top policy makers that the basic question must be put on the Administration's agenda.

POSSIBLE NEXT STEPS

Despite the dour tone of this paper, the effort to redress urban segregation should not be viewed as hopeless by any means. The idea of mounting a concerted attack on housing and school segregation in urban areas is an important one and, if the effort is carefully framed, it may achieve results. Among the more promising steps to be considered are:

1) a HUD effort to replicate the positive experience in Louisville by initiating an affirmative program to produce Section 8 housing opportunities in newly desegregated school districts. The inducement for the program, as in Louisville, would be to lessen the need for busing to carry out the school remedy. The program could also draw on the *Gautreaux* agreement by including a strong counseling component;

2) exploration with the Justice Department of the prospects for developing a lawsuit seeking combined housing and school relief;

3) efforts by civil rights officials and private groups to raise the issue to a higher level of policy consideration.

Experience in the quarter-century since the Supreme

Court's decision in *Brown* v. *Board of Education* has demonstrated the capacity of law and government to bring about basic social change by empowering people to make changes in their own lives. A critical element in that experience was the assistance that the courts finally received from the Executive branch and Congress during the 1960s—support that brought dramatic progress in race relations in the South. While the current realities of race and economic segregation in metropolitan areas may now seem as intractable as the legalized caste system of the South once appeared, we now have reason to believe that even deeply rooted injustices can be made to yield to a determined effort of will.